

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

KARLA BOZARTH,
Defendant.

Case Nos.: 16-cr-00262-BTM-5
19-cv-01763-BTM

**ORDER DENYING BOZARTH'S
SECTION 2255 MOTION**

Pending before the Court is a remaining claim from Defendant Karla Bozarth's motion under 28 U.S.C. § 2255 to vacate, set aside, or reduce her sentence. On June 4, 2021, the Court denied Bozarth's Section 2255 claims except one—her claim that her attorney was ineffective for failing to call Pawel Wlodarczyk as a witness at trial. For the reasons discussed below, the Court rejects that remaining claim and thus denies in full Bozarth's Section 2255 motion.

I. BACKGROUND

On November 22, 2016, a jury found Bozarth guilty of nine counts: eight counts of bringing aliens into the United States for financial gain, in violation of 8 U.S.C. § 1324(a)(2)(B)(ii), and one count of conspiracy to do the same. (ECF Nos. 219 & 227). The charges stemmed from a smuggling operation on an aptly named

1 boat, the *Miss Behavin*, on which eight noncitizens were being smuggled into the
2 United States. Among others, Bozarth, Wlodarczyk, and Ted Jenzen, the boat
3 captain, were charged regarding the smuggling operation.

4 On the day Bozarth's trial was scheduled to begin, the government dismissed
5 with prejudice the charges against Wlodarczyk—because the government did not
6 have a “good-faith basis” to believe it could convict him on the evidence it had.
7 (ECF No. 262). Jenzen had pled guilty and testified against Bozarth. (ECF No.
8 264).

9 Bozarth worked for a yacht brokerage company in Mexico. As Bozarth
10 admits, “there was extensive evidence that [she] sold boats to the smuggling
11 conspiracy.” (ECF No. 410 at 2). Jenzen testified that Bozarth introduced him to
12 the smuggling operation, discussed with him how much he would be paid for
13 captaining the boat, and showed him a different boat that might be used for a
14 different smuggling operation. (ECF No. 264 at 35-37, 42-47, 56-64). Bozarth
15 explained to Jenzen that she had orchestrated similar smuggling operations and
16 asked him to drive noncitizens to the marina for a smuggling operation. (Id. at 35-
17 38, 56-64).

18 Before this smuggling operation, Bozarth asked Jenzen to do a “sea trial” (a
19 test run) of the *Miss Behavin*, and Bozarth involved Jenzen in the boat's purchase.
20 (Id. at 72-78). On February 2, 2016, Bozarth called Jenzen and told him to meet
21 her at the *Miss Behavin*. (Id. at 100). When Jenzen arrived at the boat,
22 Wlodarczyk was there with Bozarth. (Id.). Wlodarczyk was Bozarth's employee
23 and roommate or tenant. The noncitizens were loaded on the boat, and Jenzen
24 and Wlodarczyk, but not Bozarth, departed on the boat with the noncitizens. (Id.
25 at 103-06). Jenzen did not know why Wlodarczyk was on the boat. (Id.).

26 The *Miss Behavin* was later stopped by law enforcement officers, who
27 boarded the boat and discovered the noncitizens. (Id. at 106-114). Jose Aguilar-
28 Flores, a noncitizen on the *Miss Behavin*, testified that Bozarth picked him up from

1 a restaurant in Ensenada and drove him to the boat. (ECF No. 263 at 71-76).

2 During closing arguments, the prosecutor argued that Wlodarczyk must have
3 known about the smuggling operation because otherwise he would not have been
4 allowed on the boat. (ECF No. 267 at 85). The prosecutor also argued that
5 Wlodarczyk must have known about the operation through his relationship with
6 Bozarth, and that Wlodarczyk was the “link” to Bozarth’s guilt. (Id.).

7 As stated, the jury found Bozarth guilty of the nine counts. On July 10, 2017,
8 the Court sentenced Bozarth to 60 months in custody.¹ (ECF Nos. 279 & 281).
9 On August 30, 2018, the Ninth Circuit affirmed Bozarth’s convictions. (ECF No.
10 310).

11 Bozarth filed a Section 2255 motion on September 13, 2019, raising
12 numerous constitutional claims. (ECF No. 315). The Court rejected all but one
13 claim—that Bozarth’s attorney was ineffective for failing to call Pawel Wlodarczyk
14 as a witness at trial. (ECF No. 354). The Court’s found Bozarth’s attorney deficient
15 for failing to interview Wlodarczyk as a potential witness. (Id.). The Court also
16 ruled that the prosecutor did not commit misconduct by arguing that Wlodarczyk
17 was involved in the conspiracy. (Id.).

18 The Court held evidentiary hearings, and Wlodarczyk testified. (ECF Nos.
19 421, 422, 424. & 425). He claimed he did not know about the smuggling operation
20 and that he was traveling to the United States to obtain construction goods he
21 could not obtain in Mexico. The parties briefed the remaining issue regarding
22 Wlodarczyk, and the Court heard oral argument. (ECF Nos. 394, 407, 410, 423,
23 426, & 427).

24
25
26 ¹ On August 17, 2020, the Court granted a joint motion to release Defendant under 18
27 U.S.C. § 3582(c)(1)(A)(i), modifying her sentence to time served (33 months and 15
28 days) and 60 months of supervised release. (ECF Nos. 342 & 346). If Bozarth
believes the length of her supervised release term is unlawful under 18 U.S.C. §
3583(b), she should file a motion forthwith.

Bozarth asks the Court to reconsider its ruling that the government did not commit misconduct by arguing that Wlodarczyk was involved in the conspiracy after the charges against him were dismissed with prejudice. The government asks the Court to reconsider its finding that trial counsel was deficient for failing to interview Wlodarczyk. The Court has reconsidered both rulings and holds that there is no basis to disturb them.

II. DISCUSSION

28 U.S.C. § 2255 provides that a prisoner in custody “claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence.” “Failure to raise an ineffective-assistance-of-counsel claim on direct appeal does not bar the claim from being brought in a later, appropriate proceeding under § 2255.” *Massaro v. United States*, 538 U.S. 500, 509 (2003).

A claim for ineffective assistance of counsel must establish that (1) counsel’s performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish prejudice, Bozarth “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. Prejudice is found where “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687.

Bozarth has failed to show prejudice.

Bozarth has failed to show prejudice, for two reasons.² First, Wlodarczyk’s

² The Court reiterates its ruling that counsel was deficient for failing to interview Wlodarczyk. The government has not identified a reasonable reason for counsel to not

1 testimony is incredible and is unlikely to be accepted by a jury. Second, even
2 assuming otherwise, his testimony hardly undermines the substantial evidence
3 against Bozarth and thus does not create a “reasonable probability” of a different
4 result. Each point is addressed in turn.

5 According to Wlodarczyk, he was traveling on a boat to the United States to
6 obtain construction goods from Home Depot, everyone else on the boat was
7 orchestrating a smuggling operation or was a noncitizen being smuggled, and yet
8 he was completely unaware that the boat was being used for smuggling. This is
9 incredible.

10 Wlodarczyk likely knew that the boat was being used for alien smuggling.
11 He is likely to have seen the noncitizens or heard the members of the conspiracy
12 discussing the topic. It is also incredible to believe that a group of smugglers would
13 allow an innocent bystander to travel with them. Under this theory, the smugglers
14 would be risking Wlodarczyk discovering the operation and reporting them to the
15 authorities. That would be a terrible risk for them, and it is very odd to believe they
16 would have risked that just so Wlodarczyk could buy goods. Furthermore, his
17 testimony that he was taking a cross-border boat ride to shop at Home Depot lacks
18 any credibility. No reasonable or rational jury would have accepted Wlodarczyk’s
19 testimony.

20 Moreover, even if he was unaware of the smuggling operation, a jury may
21 reasonably believe that he knew the boat was traveling to the United States
22 because of Bozarth. Bozarth is Wlodarczyk’s apparent connection to the boat, and
23 it is doubtful that Bozarth knew about the boat’s travel plan without knowing about
24 the smuggling operation. In other words, the mere fact that Wlodarczyk was on
25 the boat incriminates Bozarth.

26
27
28 do so.

1 In any case, even assuming the jury accepted Wlodarczyk's testimony, his
2 testimony does not undermine the Court's confidence in the fairness of the trial nor
3 raise a reasonable probability of a different result. There were three primary pieces
4 of evidence against Bozarth: (1) the "extensive evidence that [she] sold boats to
5 the smuggling conspiracy"; (2) Jenzen's testimony incriminating her and providing
6 that she was a principal architect of the smuggling operation: and (3) an illegal
7 alien's testimony that Bozarth drove him to the boat for the smuggling operation.
8 That evidence is substantial, if not overwhelming. Wlodarczyk's testimony that he
9 was not involved hardly, if at all, undermines that evidence.

10 Thus, Wlodarczyk's testimony does not come close to undermining the
11 Court's confidence in the fairness of the trial. There is no reasonable probability
12 that his testimony would have changed the verdict. His testimony was
13 unbelievable and, even if accepted, was not particularly probative of Bozarth's guilt
14 or innocence.³ Her guilt was proved through substantial evidence, and because
15 Wlodarczyk's testimony would not have undermined that evidence, the Court must
16 deny Bozarth's claim and motion. *See, e.g., Hernandez v. Chappell*, 923 F.3d 544,
17 557 (9th Cir. 2019) (finding no prejudice because the defendant was relying on
18 weak evidence that would not have sufficiently undermined the overwhelming
19 evidence of guilt).

20 The Court recognizes that the prosecutor called Wlodarczyk the "link" to
21 Bozarth's guilt. But that statement oddly underrepresented the strength of the
22 government's case. The government had a strong case without that alleged link.
23 So even if Wlodarczyk's testimony would have weakened the prosecutor's
24 argument, that would have not helped Bozarth. The case against Bozarth would
25

26
27 ³ Indeed, even under Wlodarczyk's testimony, he appears to have lacked personal
28 knowledge of whether Bozarth was in fact involved in the conspiracy.

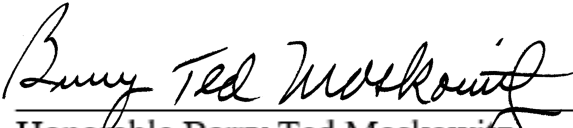
1 have still been very strong. Moreover, as explained, the Court agrees that
2 Wlodarczyk arguably links Bozarth to the smuggling operation. There are good
3 reasons to believe Wlodarczyk was not an innocent bystander on the *Miss*
4 *Behavin*, and his presence on the boat helped to incriminate Bozarth.⁴

5 **III. CONCLUSION AND ORDER**

6 For the reasons stated, Bozarth's Section 2255 motion is denied in full.
7 Bozarth is denied a certificate of appealability because she has not "made a
8 substantial showing of the denial of a constitutional right." See 18 U.S.C.
9 2253(c)(2).

10 **IT IS SO ORDERED.**

11 Dated: June 27, 2024

12 
13 Honorable Barry Ted Moskowitz
14 United States District Judge
15
16
17
18
19
20
21
22
23
24

25
26 ⁴ Because the prosecutor had good reason to argue that Wlodarczyk was involved in
27 the conspiracy, the Court reiterates its finding that the prosecutor did not commit
28 misconduct by so arguing. Bozarth has not shown that the government is precluded
from dismissing charges against someone and then arguing that he was involved in the
illegal scheme at issue.